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No. 85-220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

vs.

HON. MARVIN CHERNER, Judge of the Tenth Judicial Circuit of Alabama,
Respondent.

On Writ of Certiorari to the Supreme Court of Alabama

REPLY BRIEF OF PETITIONER

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The Brief in Opposition to the Petition for Writ of Certiorari filed on behalf of respondent argues that 45 U.S.C. § 55 was dispositive of the issue raised by the petition. (Respondent's Brief 8-10) Because that issue was not discussed in the original petition, we are compelled to file a reply.

Section 45 is a substantive statute which provides that any "contract, rule or device whatsoever" which exempts a railroad

company from liability under the FELA is void.[1] That section does not refer to jury trial.

The sole question raised in the Petition for Writ of Certiorari involves whether the Federal Employers' Liability Act requires that an attempt to set aside the judgment be decided by a jury. Thus, whether a consent judgment is a device within the meaning of 45 U.S.C. § 55 is of no import.

Respectfully submitted,

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Kenneth D. Davis

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[1] This section reads in its entirety as follows:

> Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void: *Provided,* That in any action brought against any such common carrier under or by virtue of any of the provisions of this chapter, such common carrier may be set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought.